IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITON NO. 5298 OF 2004

Mrs.Anjali Jayant Gandhi .. Petitioner

versus

Mr.Ramesh Gopal Vagholikar .. Respondent

...

Mr.R.S. Apte for N.R. Bubha for the petitioner.
Mr.Pankaj Rajmachikar i/b A.R. Vaidya for the respondent.

CORAM : D.G. KARNIK, J

DATED : 16th July 2004.

ORAL JUDGEMENT:-

1. Rule. By consent, rule made returnable forthwith. Heard the learned counsel for the parties.

2. The respondent is an owner of the flat no.1 situated in Suyog Co-operative Housing Society Ltd, Gultekdi in the locality known as Tilak Maharashtra Vidyapeeth Colony, Pune 411 037. (hereinafter referred to as the 'suit premises') By an agreement of leave and licence dated 1st may 1996, the respondent granted a licence to the petitioner to use and occupy the suit premises for a period of 22 months commencing from 1st May 1996 and expiring on 31st March 1998, on the monthly licence fee of Rs.1,500/-. On expiry of the period of the licence by mutual consent the licence was renewed for a period of 36 months on the increased licence fee of Rs.2,000/- per month. A written agreement of renewal of the licence was also executed between the parties on 1st April 1998. The renewed licence expired on 31st March 2001. As the petitioner failed and neglected to vacate and deliver possession of the suit premises, the respondent filed an application for eviction under section 24 of the Maharashtra Rent Control Act, 1999 (for short "the Maharashtra Rent Act" or simply "the Act") before the Competent Authority. By an order dated 29th November 2003, the

Competent Authority allowed the application of the respondent and ordered eviction of the petitioner. Revision Application filed by the petitioner before the Additional Commissioner was dismissed by an order dated 24th April 2004. That order is impugned in the present Writ Petition.

3. Mr.Apte, the learned counsel for the petitioner, firstly submits that the agreements of leave and licence dated 1st May 1996 and 1st April 1998, though executed in writing, are not registered and hence not admissible in evidence in view of section 55 of the Act. Section 55 of the Act reads as under:-

> **Sec.55 Tenancy agreement to be compulsorily registered.**
>
> (1) Notwithstanding anything contained in this Act or any other law for the time being in force, any agreement for leave and licence or letting of any premises, entered into between the landlord and the tenant or the licensee, as the case may be, after the commencement of this Act, shall be in writing and shall be registered under the Registration Act, 1908
>
> (2) The responsibility of getting such agreement registered shall be on the landlord and in the absence of the written registered agreement, the contention of the tenant about the terms and conditions subject to which a

> premises have been given to him by the landlord on leave and licence or have been let to him, shall prevail, unless proved otherwise.
>
> (3) Any landlord who contravenes the provisions of this section shall, on conviction be punished with imprisonment which may extend to three months or with find not exceeding rupees five thousand or with both.

A bare perusal of sub section (1) of section 55 of the Act shows that only the agreements which have been entered into between a landlord and a tenant or a licensee after the commencement of the Act are required to be in writing and are also required to be registered under the Registration Act, 1908. The Act came into force only on 31st March 2000 by virtue of the notification issued under sub section (3) of section 1 of the Act and has no retrospective operation. As the two agreements of leave and licence dated 1st May 1996 and 1st April 1998 were executed prior to the coming into force of the Act, section 55 is not applicable to them and the agreements were not required to be registered under the Registration Act 1908. Mr.Apte submits that though the second agreement was made on 1st April

1998, it was to expire after the Act came into force and was to expire on 31st March, 2001 remain in force till 31st March 2001 and hence the agreement was required to be registered. registration. The

submission is stated only to be rejected. An agreement of leave and licence which was executed prior to 31st march 2000 but was subsisting on that date need not be registered. Sub section (1) of section 55 makes it abundantly clear that only the agreements entered into after the commencement of the Act should be in writing and be registered.

4. Mr. Apte seocndly contends that proceedings could not be initiated under section 24 of the Act because the leave and licence agreement was entered into on 1st April 1998 i.e. prior to the coming into force of the Act. I see no such limitation imposed under section 24. In respect of a licence which was granted prior to 31st March 2000 and where the licence continued to remain possession on or after the Act came into force, an application for eviction of such a licence can be filed only u/s.24 of the Act and not under the Bombay Rent and lodging Houses Rates Control Act, 1947 (for short 'the

Bombay Rent Act') which has been repealed by the Act. The second contention of Shri Apte is also rejected.

5. Shri Apte submits that the agreement of leave

and licence dated 1st April 1998 is not properly stamped and has wrongly been admitted in evidence. The agreement was impounded and the deficit stamp duty along with the penalty has been recovered by the stamp authorities. First proviso to section 34 of the Bombay Stamp Act provides that an instrument which is not properly stamped would be admitted in evidence on payment of a deficit stamp duty with penalty. As the deficit stamp duty along with penalty has been paid, the instrument of leave and licence was rightly admitted in evidence by the authorities below.

5. Mr. Apte submits that the signature on the agreement of leave and licence was not that of the petitioner. This contention was also raised before the competent authority and therefore, the document was sent for examination by an handwriting expert. The handwriting expert opined that the signature on

the instrument of leave and licence was of the petitioner. The handwriting expert was examined as a witness and his evidence has been believed. The finding that the instrument bears the signature of the respondent, is concurrently recorded by the competent authority as well as the revisional

authority. In exercise of a writ jurisdiction under Article 227 of the Constitution of India, I see no reason to take a different view.

7. Mr. Apte lastly contends that the petitioner was a tenant and not a licensee. He submits that previously another block on the eastern side belonging to the respondent was let out to the petitioner and in the year 1996 it was exchanged for the suit premises. A receipt of the rent paid for the previous flat was produced on record. The agreement of letting another flat came to an end and the petitioner surrendered the tenancy of the old flat and took on leave and licence the suit flat. This amounts to novation of an old agreement of letting of old flat. Under explanation(b) to section 24 of the Act, an agreement of leave and licence in writing is conclusive evidence of the

facts stated therein. In the circumstances, the contention of the petitioner that the petitioner is a tenant and not a licensee has been rightly rejected by the authorities below.

8. For these reasons, there is no merit in the Petition which is dismissed with costs.

Rule discharged with costs.

D.G. KARNIK, J